IN THE HIGH COURT OF UTTARANCHAL, NAINITAL.

No. 10- COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING.

[Chapter VIII, Rule 32(2) (b)]

Criminal Appeal No. 1269/2001
(Old No. 35/1987)

Pyare Lal … Appellant.

Vs.

State .. Respondent.

Decided on 29-08-2005

A.F.R. (Approved for Reporting)
~~Not Approved for Reporting~~

(Irshad Hussain, J.)

(J.C.S. Rawat, J.)

Dated: 29-08-2005.

In the High Court of Uttaranchal, at Nainital.

Criminal Appeal No. 1269/2001
(Old No. 35/1987)

Pyare Lal S/o Budhi Lal

R/o Village Naitala, P.S. Maneri,

District Uttarkashi .. Appellant.

Vs.

State .. Respondent.

Sri Sudhir Singh, assisted by Ms. Prabha Nauliyal, learned counsel for the appellant.

Sri A. Rab, learned Addl. G.A., assisted by Mr. Suhail A. Siddiqui, learned Brief Holder for the State.

Coram: Hon'ble Irshad Hussain, J.
Hon'ble J.C.S. Rawat, J.

Dated: 29-08-2005

(Per: Hon'ble J.C.S. Rawat, J.)

Appellant Pyare Lal has preferred this criminal appeal against the judgment dated 17-10-1986, passed by Sri Maharaj Din, the then Sessions Judge, Uttarkashi, in Sessions Trial No. 3 of 1986, whereby he was convicted and sentenced to undergo imprisonment for life under Section 302 I.P.C.

2- Briefly stated the prosecution case is that deceased Smt. Sajana Devi was the wife of appellant Pyare Lal. At the time of the incident the appellant was living at the house of his father-in-law for the last one months in village Manpur. On 3-2-1986 at about 9 A.M. the appellant and his wife Smt. Sajana deceased went to jungle for bringing the grass. Other women of the village also went to jungle to collect the grass. When the appellant and his wife Smt. Sajana did not return to the house in the evening, Gainu (P.W.1), the father of the deceased Smt. Sajana, along with other villagers went to the jungle in their search but they could not be traced. In the night, Kalmu (P.W.6), who was working as mason in village Bonga, on his return to home, informed Gainu that his son-in-law (the appellant) met him in the way and told that he was going to meet his sister in village Bonga. Prem Lal resident of Village Bonga also told the informant that the appellant met him in the way near village Koti and on his query the appellant told that he

was coming from village Manpur. Next day, that is, 4-2-1986 at 8.05 A.M. Gainu lodged the written report, Ext. Ka.1 at the Police Station, Uttarkashi. On the basis of the written report, check F.I.R. Ext. Ka.9 was prepared the same day by the S.O. S.O. Sri Devendra Singh Negi, started the investigation. He went to jungle where the deceased and the appellant had gone to collect the grass. On 5.2.1986 the Investigating Officer recovered the dead body of Smt. Sajana at Chhajgad on Uttarkashi- Lambgaon motor road. He held the inquest on the dead body of the deceased and prepared the inquest report, Ext. Ka.10. The Investigating Officer prepared photo of dead body (Ext. Ka.11) and challan (Ext. Ka.12), sealed the dead body and sent it for post mortem along with other relevant papers. He also took the sample of bloodstained and plain earth from the place of incident and prepared the memo Ext. Ka.2. He also recovered a pair of chappals, Dranti, Suleti, from near the dead body and prepared memo Ext. Ka.3. The I.O. also took into possession a scarf (Muffler) from near the dead body and sealed it at the spot and prepared recovery memo Ext. Ka.4. He registered a case crime No. 31/1986 under Section 302 I.P.C. against the accused vide G.D. No. 39 dated 5-2-1986 at 8.05 P.M. On 6.2.1986 the Investigating Officer prepared the site-plans, Ext. Ka.13 and Ext. Ka.14.

3- The autopsy on the dead body of Smt. Sajana Devi was performed by Dr. S.S. Aswal and Dr. A.W. Khan on 6-2-1986 about 10-20 A.M. and as many as 12 ante-mortem injuries were found on the person of the deceased. In the opinion of the Medical Officers the cause of death was asphyxia due to throttling. The doctors prepared post mortem examination report , Ext. Ka.5.

4- On 31-3-1986 at about 10 P.M. the Investigating Officer arrested the accused at Nakuri from the road near Athali Jhula Pul, who was brought there by the village people and handed over to the I.O. and arrest memo, Ext. Ka.6 was also prepared. After completion of investigation, charge sheet, Ext. Ka.15 was submitted by the I.O. against the appellant on 16-4-1986.

5- The charge under Section 302 I.P.C. was framed by the learned Sessions Judge against the appellant. The appellant pleaded not guilty and claimed to be tried.

6- In order to prove its case, the prosecution examined seven witnesses. P.W.1, Gainu, the father-in-law of the appellant is the informant of the case. He has lodged the written report, Ext. Ka.1 at the Police Station. He has narrated the entire prosecution story as mentioned in para No.2 of the judgment. He is also the witness of the recovery of the dad body from Chanagaad. He is also the witness of the inquest report, Ext. Ka.10 and taking of sample of bloodstained and plain earth vide memo (Ext. Ka.2). He also proved the material exhibits Daranti, rope and Suleti. According to him the muffler of Pyare Lal appellant was also recovered by the I.O. in his presence and he proved the memo, Ext.Ka.4. P.W.2, Smt. Surama is the mother of the deceased Smt. Sajana. She stated in her evidence that in the morning on the day of incident a quarrel took place between the appellant and Smt. Sajana and the appellant pushed down Smt. Sajana from the third floor of the house. Apart this, she has corroborated the prosecution version.

7- P.W.3, Jata Shankar has stated in his evidence that on 3-2-1986 Smt. Sajana and Pyare Lal had gone to jungle to collect grass but they did not return home. On 4-2-1986 the police had come to the jungle and made search but the dead body could not be searched. On 5-2-1986 again police came to jungle and they recovered the dead body of Smt. Sajana at Chanagaad near Hawaghar. According to him police took in to possession the dead body and performed inquest. He is also the witness of inquest.

8- P.W.4, Baisakhu has stated that at about 1 P.M. in the day he saw the accused Pyare Lal coming from jungle. On his query about Smt. Sajana the accused told him stated she is cutting grass in the jungle and he is going home as he is not feeling well and the appellant went towards village Manpur.

9- P.W.5, Smt. Kori Devi supported the prosecution case and stated that a about 11 A.M. she and Purna Devi were coming to their home with fuel wood. They saw Pyare Lal and Sajana Devi bringing grass and going towards Hawaghar.

10- P.W.6, Kalmu stated that on 21 Gate Magh he was working at the house of Smt. Faguniya in village Bonga. According to him at about 2- 2 ½ P.M. in the day he saw Pyare Lal coming from village Manpur and on inquiry the appellant told him that he had coming to village Bonga to meet his sister. The witness also stated that during those days the appellant's sister was not residing in village Bonga. When he reached to his village Manpur in the evening he stated this fact to Gainu. P.W.7, Sri Devendra Singh Negi, has investigated the case. Steps taken by him towards investigation have been narrated above.

11- The appellant had pleaded not guilty of the charge levelled against him. He pleaded that he along with Sajana came to Uttarkashi in the month of January 1986 to see the fair and from there Sajana went to her paternal home along with her sister and he did not go there. He has further stated that he had been falsely implicated.

12- The appellant did not adduce any evidence in his defence. The learned Sessions Judge on his appreciation of the evidence in the case held the appellant guilty and convicted and sentenced him under Section 302 I.P.C. as aforesaid.

13- We have heard the learned counsel for the appellant and the learned A.G.A. and perused the record.

14- At the outset it need to be mentioned that it is not disputed that the deceased met a homicidal death on account of injuries sustained by her on the date of the occurrence. The genuineness of the post mortem examination report o the deceased was admitted by the accused's counsel and endorsement to this effect was also made on the post mortem report itself. In the opinion of the Medical Officer the cause of death was asphyxia due to throttling and the death had occurred about three days earlier.

15- Now we have to consider whether the appellant was responsible for the injuries sustained by the deceased Smt. Sajana Devi. There was no eye witness of the occurrence and the prosecution case rests on the circumstantial evidence. The law which is clearly settled about the circumstantial evidence is that it would be such as to point out only to the guilt of the accused and

the evidence should exclude all other hypothesis except the guilt of the accused. It is often said that though witnesses may lie, circumstances will not, but at the same time it must cautiously be scrutinized to see the incriminating circumstances as such as to lead only to hypothesis of guilt and reasonably exclude every possibility of innocence of the accused. In order to sustain conviction on circumstantial evidence, each of the incriminating piece of circumstantial evidence should be proved by cogent and reliable evidence and the court should be satisfied that the pieces of evidence taken together forge such a chain where from no inference other than the guilt can be drawn. The Hon'ble Apex Court in Sharad Birdhichand Sarda versus State of Maharashtra A.I.R. 1984, S.C. page 1622, while dealing with the circumstantial evidence has held that the onus was on the prosecution to prove that the chain is complete. The conditions precedent before conviction could be based on circumstantial evidence, were enumerated as under:-

(1) the circumstance from which the conclusion of guilty is to be drawn should be fully established. The circumstances concerned 'must or should' and not 'may' be established.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused , that is to say that, they should not be explainable of any other hypothesis except that the accused is guilty.

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

The above decision was also relied and affirmed in the latest decision of the Apex Court in the matter of State of U.P. versus Satish 2005 S.C.C. (Cri) 642.

16- Keeping in view the above principle of law, we shall consider the circumstances projected by the prosecution against the appellant. The first circumstance relied upon by the prosecution is that the appellant and the deceased Smt. Sajana were seen lastly together at about 11 A.M. in the company of the appellant. P.W.4, Baisakhu has stated that about 1 P.M. on the day of occurrence he saw the appellant Pyare Lal coming back from jungle. P.W.2, Smt. Surama Devi, mother of the deceased, has stated in her evidence that Sajana and Pyare Lal came to her house on 5th Gate of Magh and since then they were living there and in the morning of the day when the incident took place, a quarrel had taken place between Sajana and Pyare Lal in which Pyare Lal pushed down Smt. Sajana from third storey of the building. Thereafter the appellant settled there differences with Smt. Sajana and they both went to jungle to bring the grass. They were accompanied by her another daughter Ailma and other women of the village. Pyare Lal and Smt. Sajana did not return back in the evening. When her husband Gainu (P.W.1) returned from Uttarkashi at about 4 P.M., she told him that the deceased and the appellant had gone to bring grass but they did not returned back till late in the evening. Gainu along with other villagers went to jungle in search of them but they could not be found on that day. The dead body of the deceased Sajana was recovered from the jungle on the third day of the incident. It was further deposed by P.W.2, Smt. Surama that Ailma, the sister of the deceased, the appellant and the deceased along with other women of the village had boarded the bus from the road to the jungle but on the way appellant Pyare Lal dragged down the deceased and went to jungle to collect the grass. P.W.5, Kori Devi has stated in her evidence that on the date of the incident at about 11 A.M. she along with Purna Devi were bringing wood from the jungle and she saw that Sajana and Pyare Lal were carrying grass and they were going together towards Hawagarh. P.W.6, Kalmu has stated in his evidence that the appellant met him in village Bonga

at about 2.30. who was coming from the side of the village Manpur. At that time he was all alone. P.W.2 Surma Devi, P.W.5 Smt. Kori Devi and other witnesses have consistently stated that they lastly saw the accused going with Smt. Sajana to jungle. It is also the consistent evidence that they were seen together near Hawagarh by P.W.5 Smt. Kori Devi. It is also consistent evidence that immediately after 11 A.M. when the appellant was lastly seen with the deceased Sajana Devi, he was seen all alone by P.W.4 Baisakhu at 1 P.M. coming from jungle. When he enquired about Sajana he stated that she is cutting the grass in the jungle and he was not feeling well so he was going to his house. From the cross-examination of P.W.2 Smt. Surma Devi, P.W.4, Baisakhu and P.W.5 Smt. Kori Devi, the defence could not elicit anything which may adversely affect their testimony. Their evidence is cogent and credible.

17- The learned counsel for the appellant contended that the evidence of P.W.2, Smt. Surma Devi and P.W.5, Kori Devi is not credible as they are related to the complainant. It is true that P.W.2 is the mother of the deceased and it is also admitted to P.W.5 Smt. Kori Devi that she is the wife of the brother of P.W.1, Gainu, the father of the deceased, but their evidence can not be discarded on the ground that they are related to the deceased. There is no rule of law or prudence which requires that the evidence to close relations must be discarded for the simple reason that they are related to each other. The prosecution witnesses must be interested to give their evidence as to convict the appellant for his wrong doing and they would not have liked to adopt such a course by which some innocent person (particularly who happens to be a son-in-law) would be convicted in place of a person who is the real culprit of the murder of the deceased. In such circumstances it would not be just and proper to discard their evidence on account of their relationship with the deceased. We have carefully examined the testimony of the witnesses and find that their evidence is trustworthy and reliable. The witnesses have been consistent in their assertion that they had seen lastly the appellant and the

deceased together in the jungle. When they did not return home, search was made and report was lodged on the next day.

18- Learned counsel for the appellant contended that P.W.2, Smt. Surma Devi has stated in her evidence that her another daughter Ailma had also accompanied the deceased while the appellant and the deceased were going to jungle to bring the grass and Ailma had also told her mother that Pyare Lal and Sajana got down from the bus earlier and she alongwith other women went ahead. Learned counsel pointed out that Ailma was a natural witness of the incident but she was not examined by the prosecution and the appellant is entitled to acquittal. It is in the evidence of P.W.2 Surma Devi that on the date of the incident after settling the dispute which occurred in the morning on the date of the incident in between the appellant and Smt. Sajana they both went to jungle to collect and bring the grass. They were also accompanied by Ailma, another daughter of Smt. Surma Devi and other women of the village and when the appellant and Smt. Sajana deceased did not return in the evening Ailma told to her mother that they all along with other villagers boarded the bus and the appellant dragged down Smt. Sajana and went to the jungle. It is also in the evidence of P.W.2 Smt. Surma Devi that the appellant and the deceased went together from her house on the day of the incident along with other person. The prosecution has already adduced sufficient evidence to establish that the accused and the deceased were last seen going to jungle by the witnesses and there was hardly any necessity to examine Ailma to repeat the same fact. It is not always necessary to multiply the evidence of incident on the same point. The prosecution evidence has sufficiently proved the factum of last seen. It has to be seen what is the quality of the evidence and not its quantity. The evidence available on record is otherwise satisfactory in nature and can be said to be trustworthy, the increase in the number can not be said as the requirement of the case. The witnesses whose evidence is otherwise trustworthy can not be thrown out out-rightly on the ground that the other witnesses of the same facts have not been produced. The non-examination of a witness only to multiply the evidence can not be

pressed in to service like a retrial formula for discarding the prosecution evidence with the stroke of a pen. Effort should be made in appreciating the worth of the evidence as has been adduced by the prosecution.

19- It is pertinent t mention here that the accused has stated in his statement under Section 313 Cr.P.C. that in the month of January (not on the date of incident) he along with Sajana went to Uttarkashi to see a fair and he further stated that he did not come to village Manpur along with Sajana. Smt. Sajana went to her father's village Manpur along with her sister. The accused has tried to set up a defence that he was not residing with the parents of Sajana on the date of the incident. He tried to point out that on 18-1-1986, prior to 15 days of the incident, the deceased and appellant went to see the fair at Uttarkashi and thereafter he did not accompany Sajana to go her father's house. On the other hand the learned counsel for the accused before the trial court, has suggested the witness P.W.1, Gainu that he (Gainu) wanted the accused to live at his house and financially support him. It was also suggested to this witness that accused Payre Lal lived in his house despite the opposition from the side of his father. Suggestion was also put to P.W.2 Smt. Surama Devi that on the date of the incident appellant and the deceased Smt. Sajana did not go to collect and bring the grass from the jungle because the appellant was going out in search of job. The evidence of the prosecution amply prove that the accused- appellant Pyare Lal was living in the house of Gainu at the time of the murder of Smt. Sajana Devi. The defence taken by the appellant and the suggestions put to the prosecution witnesses amply fortify the fact that the accused was living in the house of Gainu at the time of the murder of Smt. Sajana.

20- The appellant Pyare Lal and Smt. Sajana Devi were last seen going to jungle together by the eye witnesses whose evidence has been discussed above. Thereafter the dead body of the deceased was recovered from the jungle near Hawaghar on the third day of the incident. The post mortem on the dead body of the deceased Smt. Sajana Devi was conducted and the medical officer found the following ante-mortem injuries on her person:-

1- Multiple abraded contusion on right side of neck in an area of 4.0 cm x 3.0 cm covered by reddish brown scab.

2- Abraded contusion on left lateral side on neck measuring 2.5cm 2.0 cm in size.

3- Two abraded contusions on left lateral side on neck below injury no.2 in an area of 3.0 cm x 3.0 cm covered with reddish brown scab.

4- Lacerated wound on scalp measuring 5.0cm 1.0cm in size on back of head.

5- Lacerated wound on left upper eyelid measuring 2.0 x 0.5cm in size.

6- Lacerated wound on lower lip on right side measuring 3.5 x 0.5cm in size.

7- Lacerated wound on redial aspect of right foot measuring 2.5x 2.0 cm. in the vicinity of all lacerated wounds clotted blood was present.

8- Abrasion on anterior aspect of right ankle measuring 2.0 x 1.o cm in size covered with reddish brown crust.

9- Abrasion on right thigh 3.5 x 4.0 cm in size.

10-Abrasion on fore head on left side measuring 4.0 x 2.0 cm in size.

11-Abrasion on right knee measuring 1.0 x 0.5 cm in size.

12-Contusion on left labia region measuring 3.0 x 2.5cm in size.

21- As has already discussed above, learned counsel for the accused in the trial court has admitted the genuineness of the post mortem report. The doctor has given his opinion that the cause of death was asphyxia due to throttling. The evidence of the prosecution further stand corroborated by the medical evidence. The medical officer has detected 12 ante-mortem injuries on the person of the deceased Smt. Sajana Devi. This fact goes to show that while she was being throttled she might have put resistance and during this course injuries were received by her on the forehead and scalp which further shows that when the victim was got down for throttling she was mercilessly beaten and it clearly proves that the accused intentionally and knowingly committed the

murder of the deceased. This fact also shows that the deceased was seen alive lastly in the company of the appellant. Thereafter she was found dead and ante-mortem injuries were found on her body. Though the appellant was seen all alone. This fact leads us to assume that the appellant alone was the author of the crime and none else.

22- The next circumstance relied upon by the prosecution is that a scarf (muffler) of the appellant along with sleepers, Dranti and Suleti of the deceased were recovered at the place of the occurrence. the Investigating Officer recovered the sleepers, Dranti, rope Suleti and scarf from the spot. P.W.1, Gainu has categorically stated that the scarf so recovered belonged to appellant Pyare Lal and its recovery memo, Ext. Ka.4 was also prepared in the presence of the witness. The recovery of the scarf of the appellant from the place of the occurrence amply proves that the death was caused by the appellant alone. The appellant was specifically put a question that scarf (Muffler) of the accused was recovered at the spot, the accused has merely denied this fact. He has not stated that it does not belong to him. On behalf of the defence a suggestion was put to P.W.1, Gainu that no such scarf was recovered from the spot and it was further suggested that it was kept at the spot later on. The witness had denied the suggestion. The prosecution had proved that sleeper, Dranti, Suleti and scarf were recovered from the place of occurrence. P.W.1 Gainu verified the scarf which belonged to appellant. The evidence of the prosecution amply proves the fact that the scarf was recovered from the place of incident. The recovery of the scarf further leads us to draw an inference that the appellant was present at the spot at the time of the death of the deceased. Therefore, this circumstance further leads to the conclusion that the murder was committed by the appellant alone and none else.

23- The next circumstance relied upon by the prosecution pertains to the stand taken by the appellant in the trial as to parting company with the deceased. Here we must notice as discussed hereinabove, the prosecution has established the fact that the deceased was lastly seen in the company of the appellant at about

11 A.M. on 3-2-1986. Immediately thereafter the appellant was seen all alone at village Bonga while coming from the side of village Manpur. It is also in the evidence of P.W.4, Baisakhu that on 3-2-1986 at about 1 P.M. the appellant Pyare Lal met him coming from the jungle all alone and when he inquired about Smt. Sajana, the appellant told him that she was cutting and collecting grass in the jungle and he was feeling unwell so he is going back to his house and immediately thereafter the appellant met Kalmu P.W.6 at village Bonga all alone. It is also in the evidence that the appellant and the deceased did not return back to their home. . Thereafter the deceased Smt. Sajana was never seen alive and her dead body was recovered on 5-2-1986. In the aforesaid circumstances it was obligatory on the appellant to satisfy the court as to how and in what manner Smt. Sajana parted company with him. An explanation should have come from the side of the appellant in this regard. In the instant case the appellant has failed to discharge his onus. In his statement under Section 313 Cr.P.C. he has not taken any specific stand whatsoever. He has not given any explanation in this regard. On the contrary the prosecution has been able to establish the fact that on the day of occurrence, that is, on 3-2-1986, the deceased Smt. Sajana Devi was in the company of appellant. This part of the evidence has gone unchallenged in the cross examination of the witnesses and therefore we will have to proceed on the basis that the evidence of the prosecution is true. We are of the firm view that the prosecution has established the fact that on the date of incident the deceased and the appellant went to jungle to collect the grass in the morning of 3-2-1986; they were lastly seen together at about 11 A.M. in the jungle near Hawaghar; the deceased was in the company of the appellant and therefore in absence of any specific explanation from the appellant in this regard and in view of other incriminating circumstances against the appellant having been proved by the prosecution, an adverse inference will have to be drawn against the appellant as to his part in the missing of the deceased. At this point, it may be relevant to note that though no specific stand has been taken by the appellant as to his parting company with Smt. Sajana, in his statement U/S

313 Cr.P.C. The Hon'ble Apex Court has held in catena of decisions that if the prosecution establishes that the missing person was last seen in the company of the accused and was never seen thereafter then it is obligatory on the accused to explain the circumstances in which the missing person and the accused parted company. The Hon'ble Supreme Court in the case Joseph versus State of Kerala, 2000 Supreme Court Cases (Cri) Volume-IV page 926 has held as under:-

> " The incriminating circumstances enumerated above unmistakenly and inevitably lead to the guilt of the appellant and nothing has been highlighted or brought on record to make the facts proved or the circumstances established to be in any manner in consonance with the innocence at any rate by the appellant. During the time of questioning under Section 313 Cr.P.C., the appellant instead of making at least an attempt to explain or clarify the incriminating circumstances inculpating him, and connecting him with the crime by his adamant attitude of total denial of everything when those circumstances were brought to his notice by the court not only lost the opportunity but stood self-condemned. Such incriminating links of facts could, if at all, have been only explained by the appellant, and by nobody else, they being personally and exclusively within his knowledge. Of late, courts have, from the falsity of the defence plea and false answers given to court, when questioned, found the missing links to be supplied by such answers for completing the chain of incriminating circumstances necessary to connect the person concerned with the crime committed (*see State of Maharashtra versus Suresh*). That missing link to connect the accused and appellant, we find in this case provided by the blunt and outright denial of every one and all the incriminating circumstances pointed out which, in our view, with sufficient and reasonable certainty on the facts proved, connect the accused with the death and the cause for the death of Gracy. For all the reasons stated supra, we have no hesitation to

agree with the findings of the Division Bench of the High Court holding the appellant guilty of offences under Section 302 for committing the murder of Gracy and for robbing her of her jewellery worn by her- MOs 1 to 3, under Section 392."

24- It is pertinent to mention here that the appellant has given difference versions to the witnesses in regard to parting company with the deceased. He stated to P.W.4, Baisakhu, who met him at about 1 P.M. all alone coming from the jungle, that he was feeling unwell and therefore he was returning back. When the witness P.W.4, Baishakhu inquired about the deceased, the appellant told him that she was cutting and collecting the grass in the jungle. When the appellant met to P.W.6, Kalmu at village Bonga all alone at about 2.30 P.M. on the day of incident itself, he was coming from the side of village Manpur and on inquiry the appellant told him that he was going to village Bonga to see his sister but instead of going to village Bonga the appellant came towards Uttarkashi. At the time of the incident witness P.W.6, Kalmu was working as mason at the house of Smt. Faguniya in village Bonga and his presence in village Bonga can not be doubted. The witness also stated that during the days of incident sister of the appellant was not living in village Bonga but she had gone to her maika in village Netala. The witness on his return to his house has told this fact to Gainu in the night of the day of the incident. As such the appellant has given different versions to the difference witnesses. The evidence of the prosecution witnesses on this point is consistent, credible and cogent. Nothing could be elicited from the cross-examination of these witnesses and the witnesses remained consistent during their cross-examination. It is amply proved that the appellant has given three different versions on three different occasions. The statement of appellant made under Section 313 Cr.P.C. being palpably false and there being cogent evidence adduced by the prosecution to show that the appellant had given different versions with regard to his parting company of the deceased Smt. Sajana, the court will have to proceed on the basis of the fact that the accused has not explained inculpating

circumstances established by the prosecution against him which would form an additional link in the chain of circumstances *(See Mani Kumar Thapa versus State of Sikkim 2002 S.C.C. 1367 and State of Maharashtra versus Suresh 2000 S.C.C. 2003).*

25- The other incriminating circumstance relied upon by the prosecution is that the appellant absconded from the scene. There was no explanation from the side of the appellant as to why he parted the company of Sajana from the jungle and why he went here and there after parting the company of the deceased. It was pointed out by the learned counsel for the appellant that the appellant himself reported to the police on 31-3-1986. In his statement under Section 313 Cr.P.C. the appellant specifically stated that he went to the police to get himself arrested. It has also come in the evidence that the appellant did not return to village Manpur. He firstly went to village Bonga and thereafter the Uttarkashi. The learned Sessions Judge has rightly held that the appellant neither went to meet his sister in village Bonga because she was not living there at that time nor he returned to village Manupr and he was hiding himself after committing the murder of Smt. Sajana. The learned Sessions Judge further held that the guilty conscience of the accused is established because after committing the murder of Sajana he went to Nainbagh where his sister was residing and thereafter he came to Uttarkashi via Mussorrie. He did not adopt the direct route from Nainbagh to Uttarkashi via Barkot. The learned Sessions Judge also disbelieved the claim of the accused that when he came to know in the way of village Kuthari that his wife had been murdered and he was wanted in that case so he surrendered himself before the police. The appellant did not surrender himself rather he was arrested by the residents of village Athali and was handed over to the police. The aforesaid broad feature of absconding of the accused can not be said stepped as an innocuous circumstance. This circumstance of absconding has the utility to form the link to complete the full chain.

26- Learned counsel for the appellant argued that in the absence of any motive it is unsafe to place reliance on the circumstantial evidence adduced by the prosecution. He pointed out that in

absence of the motive in a case of circumstantial evidence of this nature it would be dangerous to base of conviction. We do not find any force in this argument. Though the motive for commission of the crime has not been specifically stated in the F.I.R. but P.W.2, Smt. Surma Devi, the mother of the deceased Sajana, has stated that a quarrel took place between the deceased and the accused in the morning on the day of the incident, that is, on 3-2-1986, and deceased was pushed down by the accused from third storey of the building. P.W.2, Smt. Surama has further stated that after some time the accused got the differences settled and they both agreed to go together for collecting and bringing the grass from the jungle. This fact shows that the appellant had already ill-will against the deceased and due to the aforesaid ill-will the deceased was murdered. For the sake of argument assuming that this evidence is insufficient to establish motive for committing the murder of Smt. Sajana even they if the prosecution has been able to establish beyond reasonable doubt from other circumstantial evidence that it was the appellant alone who could have committed the murder, the absence of motive has no relevance and the evidence so adduced could be made basis for the conviction. In the instant case a strong motive has been pointed out by the prosecution and it can not be said to be insufficient motive. The prosecution has been able to establish the chain of circumstances starting right from the beginning up to the last pointing to the guilt of the accused.

27- It was pointed out by the learned counsel for the accused that there are certain discrepancies in the statements of the prosecution witnesses. He also contended that there are also contradictions in the statements of the witnesses before the trial court and those recorded under Section 161 Cr.P.C. The learned counsel for the appellant has taken us to those contradictions in the testimony of the witnesses. Learned counsel pointed out in the evidence of P.W.1, Gainu that without making search of the accused at his house in village Netala the informant Gainu went to police Station and lodged the report. In the cross-examination of this witness is has come that firstly he went to village Netala, which is four kilometers away from Uttarkashi and when the accused was not

available there, he returned back and lodged the report at P.S. Kotwali, Uttarkashi. It was pointed that this fact was not incorporated in the F.I.R. Learned counsel also tried to point out the conduct of P.W.7, D.S. Negi and it was pointed out that the Investigating Officer could have gone to the house of the appellant Pyare Lal instead of tracing him in the jungle. Learned A.G.A. refuted the contention and contended that the said contradiction which is said to be in the statement of the witness had not been put to the Investigating Officer and as such the contradictions in between the statement under Section 161 Cr.P.C. and in the evidence given before the trial court can not be taken into account. It is also pertinent to mention here that the defence has pointed out certain contradictions during the course of cross-examination of the witnesses and these contradictions pertained to the statement recorded under Section 161 Cr.P.C. by the I.O. But the Investigating Officer has not been asked as to whether these statements were given to him during the investigation or not and as such those discrepancies can not be taken in to account. It is the duty of the court to separate the chaff from the grain. It has to disburse the suspicious could and dust out the smear of dust as all these things clog the very truth. So long chaff, could and dust remain, the criminals are clothed with the protective layer to receive the benefit of doubt. So it is a solemn duty of the courts not to merely conclude and leave the case the moment suspicions are created but it is the onerous duty of the courts to go within the permissible limit to find out the truth. Learned counsel also took us to certain other minor discrepancies. Some discrepancies are bound to be there in each and every case which should not be weighed so long as these do not materially affect the prosecution case. When an eye witness is examined it is quite possible for him to make some discrepancy. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness is well tutored can successfully make this testimony totally non-discrepant. But courts should bear in mind that it is only when discrepancies in the evidence of the witness are so incompatible with the credibility of his version that the court is justified in jettisoning his

evidence. While appreciating the evidence of a witness minor discrepancies on trivial matters without affecting the core of the prosecution case ought not to prompt the court to reject the evidence in its entirely. If the general tenor of the evidence given by the witness and the trial court upon appreciation of evidence forms opinion about the credibility thereof, in the normal circumstances the appellant court would not be justified to receive it once again without justifiable reasons. It is the totality of the situation, which has to be taken note of, and we do not see any justification to pass a contra-note, as well, on perusal of the evidence on record. In this context reference may be made to two decisions of the Apex Court. The first being stated of U.P. versus M.K. Anthony 1985 S.C.C. (Cri) 105 as also the later one in the case of Leela Ram versus State of Haryana and another 2000 S.C.C. (Cri) 222.

28- In view of the aforesaid discussion the circumstantial evidence as indicated above and as adduced by the prosecution is so complete and incapable of explanation of any other hypothesis than that of the guilt of the accused. The prosecution has thus succeeded in proving beyond all reasonable doubt that Smt. Sajana was murdered by appellant Pyare Lal.

29- In the result the appeal fails and is thereby dismissed. The judgment dated 17-10-1986 passed by the learned Sessions Judge convicting and sentencing the appellant to imprisonment for life under Section 302 I.P.C. is affirmed.

30- The appellant is on bail. His bail bonds are cancelled and sureties are discharged. He shall be taken in to custody forthwith and sent to jail to serve out the sentence awarded against him.

31- Let the record be sent back to the court concerned for compliance to be reported in two months.

(J.C.S. Rawat, J.) **(Irshad Hussain, J.)**

ISB